

Senator Tom Carper**Homeland Security and Rail Security**

I'm pleased to see that the Senate is finally ready to pass legislation creating a Department of Homeland Security. My colleagues and I on the Governmental Affairs Committee, under Senator Lieberman's leadership, began this process more than a year ago. When we first started out, I must admit that I had some reservations about making such dramatic changes to the way the federal government is organized. The hearings Senator Lieberman chaired during the first half of this year, however, showed me how truly ill prepared we really are to face the threat of terrorism. That is why I supported the original version of Senator Lieberman's homeland security bill when it came before the Governmental Affairs Committee on May 22, 2002, some time before President Bush released his proposed reorganization plan. I supported it again on July 24 after we incorporated a number of the President's recommendations into our original draft.

I believe that we need to create a strong Department of Homeland Security that brings together under one roof the various federal agencies charged with preventing and responding to terrorist attacks. I'm a little disappointed, however, that we appear ready to do so in a way that disregards a good deal of the hard work that went into the bipartisan bill we reported out of Governmental Affairs.

Among other things, the bill before us today abandons a compromise arrived at in committee on information sharing and the Freedom of Information Act and includes INS restructuring language that is different from anything included in the President's proposal, the House-passed bill or anything that we've debated here in the Senate. It also includes some controversial provisions we've never seen before that seemingly appeared overnight. In the 108th Congress, we can and should have a debate on tort reform. We can and should have a debate on the safety of childhood vaccines. What we should not do is hastily slip brand new provisions into this critically important bill without debate at the behest of special interests. There are three changes, however, that are of the most concern to me.

First, there is the new personnel language. This bill gives the Secretary of Homeland Security and the Director of the Office of Personnel Management almost total authority to rewrite federal civil service laws for Department of Homeland Security employees related to hiring and firing, job classification, pay, rules for labor-management relations, performance appraisal and employee appeals to the Merit Systems Protection Board. Thinking that the Secretary and OPM could not possibly know what kind of personnel system was needed at the new department before they were able to start putting it together, our committee maintained current law and asked the Secretary to report on his or her progress in setting the department up at least every six months and to ask Congress for specific changes in civil service protections to meet specific department needs.

Now, as a former governor who has had to reorganize parts of my own state's government, I can appreciate President Bush's desire to have as much flexibility as possible when creating something as large, complex and important as a Department of Homeland Security. However, I don't think it's necessary to give him or his new Secretary the power to unilaterally change or waive workplace rules over the objections of department employees and

Congress. That's why I supported the compromise put forward by Senators Nelson, Breaux and Chafee before we adjourned for the election. That language would have left the most important civil service protections related to union rights and employee appeals untouched and set up a system of binding arbitration so that the Secretary and OPM would have to work out any personnel system they draft with the employees who will be required to work under it. I wish that the personnel language in this bill was closer to that contained in Nelson-Breaux-Chafee bipartisan compromise.

The second issue that is of concern to me in this bill is the language on collective bargaining rights. It says that the President can only use the authority he currently has to remove employees' collective bargaining rights on employees transferred into the new department if their agency's mission materially changes and their duties involve intelligence, counterintelligence or investigative work directly related to a terrorism investigation. It gives him broad authority to waive this test, however, and to use his authority regardless of whether or not the mission of the relevant agency has changed. Our committee-passed bill would have required the administration to go through the Federal Labor Relations Authority to remove employees' collective bargaining rights. I was comfortable with that provision but even more so with the Nelson-Breaux-Chafee compromise on this issue, which includes the same restrictions on the President's authority included in this bill but which gives department employees the assurances that their collective bargaining rights will not be taken away arbitrarily simply because they are working in something called the Department of Homeland Security. I wish this bill offered the Department of Homeland Security's future employees as much assurance that their rights would be protected.

My greatest disappointment with this bill is the glaring omission of any meaningful provisions to improve the security of our nation's railroads. It is inexplicable that we stand ready to create a Department of Homeland Security that does nothing to protect the millions of Americans who travel by rail every day. After the tragedy of September 11th, this Congress and the President moved quickly to stabilize and secure our aviation system and to create the Transportation Security Administration with the mission of protecting all transportation modes.

The Congress followed suit with the Maritime Transportation Security Act of 2002 to protect our ports and maritime industry, which successfully passed in the Senate last week. And, now it seems that the Over-the-Road Bus Security legislation is poised to pass this body. Yet in all these efforts, we have done little to protect rail from terrorist attacks and security threats, creating an Achilles heel in our nation's efforts to secure our transportation system. For all of our commendable focus and attention on preventing future attacks against the aviation industry, it is unconscionable that we would not work to ensure that the roughly 25 million intercity passengers and many millions more that commute aboard our trains are as safe as the ones in our skies.

How can we ignore the FBI warnings made a few weeks ago that al-Qaeda is considering directly targeting U.S. passenger trains and that operatives may try to destroy key rail bridges and sections of track to cause derailments? How could the Senate have voted to appropriate \$2 million dollars to remove jars of formaldehyde and alcohol from the Smithsonian's buildings here on the Mall because of their threat to the Capitol and yet leave the rail tunnel traveling

under the Senate and House office buildings and the Supreme Court unprotected from terrorist attack? How can we end the 107th Congress having approved increased and strengthened security programs for every single transportation mode except rail, a mode we know that Al Qaeda may currently be targeting?

In creating the Department of Homeland Security, we had the chance to address this omission. We could have included provisions to secure the nation's critical rail infrastructure and facilities and augment the mission of the Transportation Security Administration. Recognizing the obvious need for greater rail security early on, Senators Hollings, McCain and others worked within the Commerce Committee to produce a bipartisan rail security bill to protect Amtrak and our vital rail infrastructure from attack or sabotage. This bill, S.1550 was supported by the Bush Administration and reported unanimously out of the Committee.

They understood the important role that Amtrak played immediately following the tragic events of September 11th, when, with the aviation system shut down and our highways clogged or closed, Amtrak kept people safely moving in the northeast and across the country. They know it is essential that we provide Amtrak with the means to harden their physical assets and protect the safety and security of the traveling public if we want to ensure that Amtrak can serve the nation in the future as it did after September 11th. They realized that more people use Amtrak's Pennsylvania Station in one day than use all of New York's three airports combined. They recognized that, like our other modes, our rail network is essential to the mobility, defense, and economic vitality of our nation. Yet, their efforts have been blocked in this body and our railroads remain largely unprotected.

Following the Commerce Committee's good work and seeing the logical role for rail security within the new Department, I offered, and the Committee voted to accept, a rail security amendment to Senator Lieberman's homeland security bill during the our markup in July. My amendment authorized funds through the Secretary of Homeland Security for critical security and safety needs across Amtrak's national network. Totalling \$1.2 billion, my amendment authorized funds to assist the diligent efforts already being made by Amtrak's police force and other law enforcement agencies, giving them the tools to focus on real threats beyond the harmless rail fans police were chasing away as described in an article on the front page of the *Washington Post* last week. The amendment included:

- \$375 million to finance systemwide security and safety enhancements. These funds would have been used to immediately address serious security risks by protecting infrastructure, stations, and facilities across the entire Amtrak system. Amtrak's top priorities to be addressed with these funds include:
 1. Securing tunnels, bridges, interlockings, towers, and yard and station facilities with surveillance equipment, perimeter fencing, security lighting, bomb detection equipment and bomb resistant trashcans (for stations), vehicle barriers and other measures.
 2. Investing in passenger information systems to allow the creation of watch lists and passenger manifests for tracking purposes and data sharing between Amtrak

Police Department and the FBI. Currently, Amtrak does not have the realtime ability to track who is onboard its trains.

3. Communications and command/control upgrades to track and locate trains enroute, to ensure adequate radio coverage across the Amtrak system, and to provide automated data for incident response and crisis management.
- \$778 million for life-safety and security improvements to the Amtrak tunnels in New York, Baltimore and Washington. The life-safety problems with the tunnels on the northeast corridor are well documented and require immediate action. The tunnels in New York (1910), Baltimore (1872) and Washington (1904) are nearing, or are over 100 year olds and constitute safety hazards due to problems with emergency exits and ventilation. Of specific concern, is a possible terrorist action involving these tunnels, which have limited evacuation capacity, antiquated stairwells, and poor lighting. The results could be catastrophic. The funds will enhance life safety features within the tunnels, including:
 1. Washington (\$40 million): upgraded emergency access and egress, improved ventilation and communications. This tunnel sees 50 Amtrak/VRE trains a day and 2 million passengers annually. Additionally, these tunnels pass ***directly under*** the Supreme Court and House and Senate Office Buildings.
 2. Baltimore (\$60 million): New fire standpipes; improved lighting and communications; egress improvements; and a preliminary design study of tunnel replacement options. This tunnel sees 125 Amtrak/MARC trains a day.
 3. New York (\$678 million, 6 tunnels): upgraded ventilation, access, and egress through new stairways and shafts; structural rehabilitation for tunnel access; and improved lighting and signage. The 6 New York Amtrak tunnels provide access to Penn station for Amtrak, New Jersey Transit and the Long Island Railroad. They are gateway to New York and the heart of the Northeast Corridor. Work on the tunnels has already begun with \$220 million from the Long Island Railroad and the FRA (through \$100 million from FY'02 DOD supplemental Appropriations Act). Funds authorized in this amendment would complete work on 3 of the 4 rebuilt ventilation and escapes shafts, dramatically improving the safety of passengers should an emergency occur in the tunnels.
 - \$55 million for wrecked equipment repair to ensure Amtrak adequate fleet capacity in the event of a national security emergency. At the time of my amendment, 96 damaged and wrecked cars and five locomotives, or nearly one out of every fifteen Amtrak cars, were sitting idle, out of service, and awaiting repair. Without these cars, Amtrak is in serious danger of being unable to provide adequate equipment to service its current routes, let alone offer additional service should there be another national emergency. With these funds, Amtrak could have repaired about half of these, and have some equipment up and running again within 90-days. In our efforts to strength the security of the homeland, that we must provide Amtrak with the equipment it

needs to serve the existing routes and to handle increased traffic should another national security crisis occur.

After the Governmental Affairs markup and the inclusion of this amendment to the Lieberman Substitute, I worked with Senators Hollings and McCain to create a bipartisan rail security package based on the previous Committee work and my amendment that would authorize needed resources while ensuring proper oversight and accountability. We agreed to work together to add this package to the homeland security legislation, in whatever form it took. I believe that Senator McCain spoke briefly about his commitment to enhancing the security of our railroads on the floor last week, and I want to thank him for working with us to create a sound security proposal. I know that he and Senator Hollings are deeply disappointed that we have not been able to get this package included in the current homeland security bill. Though we were unable to achieve success today, we are committed to doing so next year, and I urge my colleagues to join this effort. Until we have passed a rail security package, we cannot honestly say that we have secured our national transportation system.

In conclusion, today we miss a tremendous opportunity to truly secure our entire transportation network. Surely, we all agree that doing so is one of the federal government's chief responsibilities. Debates about the future of Amtrak should not stand in the way of this effort. The fact is that, today, several thousands of riders are on Amtrak trains and hundreds of thousands more use Amtrak's tracks for their daily commute to work. Securing these facilities and these services is not an issue that can wait. As the intelligence community has already warned, the risks to America's railroads are real and exist as we speak. We have a responsibility to act to protect our people and our nation. We must pass rail security legislation as soon as possible.